IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3201 OF 2006

Faiyyaz Hasham Shaikh ..Petitioner.
Vs.
Pune Municipal Corporation & Ors. ..Respondents.

Mr.V.A.Shastry, adv. for the Petitioner.
Mr.Pethe i/b R.G.Ketkar, advs. for the Respondents.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 17, 2007.

P.C.:

1. Heard the learned counsel for the Parties and perused the impugned order.

2. The petitioner is the original plaintiff. He had filed Regular Civil Suit No.1711 of 2000 seeking declaration that the notice issued by the respondent no.1 Municipal Corporation for demolition of his alleged unauthorised construction was illegal. In that suit, the plaintiff had filed his affidavit in examination-in-chief and the matter was fixed for cross-examination of the defendants on 17-6-2003. On that day, the defendant no.1 cross-examined him. It appears that he was not cross-examined by the defendant nos.2 to 11 and the matter was closed for final arguments and the judgement. The defendant nos.2 to 11 made an application on 18-1-2006 seeking permission to

cross-examine the plaintiff. That application was opposed on behalf of the plaintiff. After hearing the parties, the learned Civil Judge passed the impugned order on 1-2-2006 granting a last chance to the defendants subject to payment of cost of Rs.3,000/-. That order is challenged in the present writ petition by the plaintiff.

3. The learned counsel for the petitioner contended that as per the provisions of the Order 17, Rule 1 and 2, not more than 3 adjournments could be given and that too subject to cost. He pointed out that as per the Roznama, matter was adjourned atleast for 33 times after filing of the affidavit in examination-in-chief but the defendants never applied for cross-examination .In spite of this the trial Court had granted one more adjournment subject to payment of Rs.3,000/-. The cost was to be deposited on the same day. Cost was deposited as per the order.

4. It is true that as per the record and even as per the observations made in the impugned order by the learned trial Court, matter was adjourned on 33 occasions and the defendants had not applied for cross-examination. However, the learned trial Court felt that when the defendants had given reasons in their application for seeking an opportunity to

cross-examine, it would be in the interest of justice that the matter should be decided after giving opportunity to both sides. After taking into consideration this aspect, the learned trial Court imposed heavy cost of Rs.3,000/- for giving opportunity to cross-examine the plaintiff. It may be noted that even though the defendants had not applied for cross-examination, on 33 occasions matter was adjourned, not on the request of the defendants, and there is nothing on record as to why the matter was adjourned and not disposed off. Incidentally before the matter was taken up for final arguments, defendants noted that the plaintiff was not cross-examined on their behalf and they made an application, which was granted subject to payment of cost of Rs.3,000/-. Taking into consideration the circumstances, I find that no injustice will be caused to the plaintiff if he is required to offer himself for cross-examination. His cross-examination is material particularly when there is allegation that the plaintiff has made unauthorised construction and the notice was issued by the Municipal Corporation for the demolition of the same. Taking into consideration these circumstances, I find no valid reasons to interfere in the impugned order.

5. Petition stands dismissed.

6. The trial Court shall expedite the hearing and dispose off the matter as early as possible.

[J.H.BHATIA, J.]